IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15577 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI AMBALAL PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HASIT DILIP DAVE for Petitioner(s) : 1,
MR KURNAL PANDYA A.G.P. for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 20/06/2007

ORAL JUDGMENT

1. The petitioner in this petition has challenged the order of respondent no. 3 dated 31st January, 2005 calling upon the petitioner to pay deficit amount of Rs.8,39,940=00 as stamp duty. It is the case of the

petitioner that the property in question have been resale by them and, therefore, there is no question to pay any stamp duty by them. The rest of the contentions raised in this petition are in respect of the issues which are similar to the issues which were raised in Special Civil Application No. 26679 of 2006 and allied matters.

1.1. It is submitted by Mr. Dave learned advocate for the petitioner that the petitioner has not approached the appellate authority by filing appeal. However, considering the trend of the appellate authority of not condoning delay, the petitioner has approached this Court. In the peculiar facts and circumstances of the case, instead of directing the petitioner to approach the appellate authority, this Court has given direction in light of the decision rendered in Special Civil Application No.26679 of 2006 and its allied matters, which were disposed of by the learned Single Judge of this Court by order dated 27.12.2006. For the reasons recorded in the said order the matters were remanded to the concerned authority by giving direction in paragraph 6 thereof. In paragraph 6 of the said judgment the learned Single Judge has observed as under:-

> “6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the impugned orders/Notices are violative of Article 14 of the Constitution of India as they are non-speaking orders and arbitrary in nature

> and, therefore, all the impugned orders/Notices passed by the Deputy Collector/ Collector, Stamp Duty Valuation Organisation are hereby quashed and set aside. All the matters are remanded to the concerned Deputy Collector, Stamp Duty Valuation Organization / Collector of Stamps for taking a fresh decision and for passing a speaking order, as per the Act,1958 read with the Rules,1984 and after giving an opportunity of being heard to the petitioners.
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> In certain matters, it is observed that the petitioners have no option but to approach the appellate authority. They approached appellate authority but the delay has not been condoned. Requisite amount has not been paid or has been paid partly, in preferring the Appeal. Such order of non-condonation of delay are also hereby quashed and set aside. The amount deposited by the petitioners, while preferring appeal, shall be refunded to the petitioners, by the respondent authorities upon proper application and upon proper verification of proof of the deposit of the amount. The parties will be at liberty to make their submissions before the concerned Deputy Collector, Stamp Duty Valuation Organization / Collector of Stamps, which may be dealt with by them while passing the orders in accordance with law. In each of the aforesaid matters, Rule made absolute to the aforesaid extent with no order as to costs."

2. In view of the aforesaid, the impugned orders passed by respondent no. 3 is quashed and set aside. The matter is remanded to the concerned authority for adjudication in accordance with the directions of paragraph 6 quoted above. However, the it will be open for the petitioner to agitate the issue with regard to resale of the land and cancellation of the dues entered into by them.

3. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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